

2005 Senate Bill 546

Date of enactment: **May 19, 2006**
Date of publication*: **June 2, 2006**

2005 WISCONSIN ACT 418

AN ACT *to repeal* 292.15 (2) (at), 292.15 (2) (d), 292.15 (6) (b), 292.31 (1) (a) 2., 292.31 (1) (c), 292.31 (3) (cm) and 292.31 (5); *to renumber* 292.15 (6) (a); *to renumber and amend* 66.1106 (13); *to amend* 66.1106 (1) (c), 66.1106 (1) (e), 66.1106 (1) (f), 66.1106 (1) (g), 66.1106 (1) (i), 66.1106 (1) (k), 66.1106 (2) (a), 66.1106 (4) (intro.), 66.1106 (4) (b), 66.1106 (7) (a), 66.1106 (7) (d) 1., 66.1106 (9), 66.1106 (10) (title), 66.1106 (10) (a), 66.1106 (10) (b), 66.1106 (13) (title), 74.23 (1) (b), 74.25 (1) (b) 1., 74.25 (1) (b) 2., 74.30 (1) (i), 74.30 (1) (j), 74.30 (2) (b), 79.095 (1) (c), 79.095 (2) (b), 227.01 (13) (zc), 234.01 (4n) (a) 3m. a., 292.15 (2) (c), 292.15 (2) (e), 292.15 (3), 292.21 (1) (c) 2. g., 292.31 (1) (title), 292.31 (1) (a) 3., 292.31 (1) (a) 4., 292.31 (1) (b) 1., 292.31 (2) (intro.), 292.31 (2) (a), 292.31 (3) (c), 292.31 (3) (d), 292.31 (4), 292.57 (title) and 292.57 (2) (a); *to repeal and recreate* 292.31 (1) (a) (title) and 292.31 (1) (a) 1.; and *to create* 66.1106 (1) (fm), 66.1106 (1) (je), 66.1106 (1m), 66.1106 (10) (c), 66.1106 (10) (d), 66.1106 (10) (e), 66.1106 (11), 66.1106 (12), 66.1106 (13) (b), 292.12, 292.15 (2) (ae) 7., 292.15 (2) (b) 5., 292.15 (7) (d), 292.15 (7) (e) and 292.23 of the statutes; **relating to:** identification and cleanup of properties that are environmentally contaminated; properties with residual contamination; modifying the environmental remediation tax incremental financing program; exempting local governmental units from solid waste management standards with respect to certain properties; the liability of certain persons for environmental contamination on property on which a cleanup has been conducted; and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 66.1106 (1) (c) of the statutes is amended to read:

66.1106 (1) (c) “Eligible costs” means capital costs, financing costs, and administrative and professional service costs, incurred or estimated to be incurred by a political subdivision, for the investigation, removal, containment, or monitoring of, or the restoration of soil, air, surface water, sediments, or groundwater affected by, environmental pollution, including monitoring costs incurred within 2 years after the date on which the department of natural resources certifies that environmental pollution on the property has been remediated, cancella-

tion of delinquent taxes if the political subdivision demonstrates that it has not already recovered such costs by any other means, property acquisition costs, demolition costs including asbestos removal, and removing and disposing of underground storage tanks or abandoned containers, as defined in s. 292.41 (1), ~~except that for.~~ For any parcel of land “eligible costs” shall be reduced by any amounts received from persons responsible for the discharge, as defined in s. 292.01 (3), of a hazardous substance on the property to pay for the costs of remediating environmental pollution on the property, by any amounts received, or reasonably expected by the political subdivision to be received, from a local, state, or federal program for the remediation of contamination in the district that do not require reimbursement or repayment, and by the

* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated” by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

amount of net gain from the sale of the property by the political subdivision. "Eligible costs" associated with groundwater affected by environmental pollution include investigation and remediation costs for groundwater that is located in, and extends beyond, the property that is being remediated.

SECTION 2. 66.1106 (1) (e) of the statutes is amended to read:

66.1106 (1) (e) "Environmental remediation tax increment" means that amount obtained by multiplying the total city, county, school, and other local general property taxes levied on a ~~parcel of real property that is certified under this section~~ taxable property in a year by a fraction having as a numerator the environmental remediation value increment for that year ~~for that parcel in such district~~ and as a denominator that year's equalized value of that ~~parcel~~ taxable property. In any year, an environmental remediation tax increment is "positive" if the environmental remediation value increment is positive; it is "negative" if the environmental remediation value increment is negative.

SECTION 3. 66.1106 (1) (f) of the statutes is amended to read:

66.1106 (1) (f) "Environmental remediation tax incremental base" means the aggregate value, as equalized by the department, of a ~~parcel of real~~ taxable property that is certified under this section as of the January 1 preceding the date on which the ~~department of natural resources issues a certificate certifying that environmental pollution on the property has been remediated in accordance with rules promulgated by the department of natural resources~~ environmental remediation tax incremental district is created, as determined under sub. (1m) (b).

SECTION 4. 66.1106 (1) (fm) of the statutes is created to read:

66.1106 (1) (fm) "Environmental remediation tax incremental district" means a contiguous geographic area within a political subdivision defined and created by resolution of the governing body of the political subdivision consisting solely of whole units of property as are assessed for general property tax purposes, other than railroad rights-of-way, rivers, or highways. Railroad rights-of-way, rivers, or highways may be included in an environmental remediation tax incremental district only if they are continuously bounded on either side, or on both sides, by whole units of property as are assessed for general property tax purposes which are in the environmental remediation tax incremental district. "Environmental remediation tax incremental district" does not include any area identified as a wetland on a map under s. 23.32.

SECTION 5. 66.1106 (1) (g) of the statutes is amended to read:

66.1106 (1) (g) "Environmental remediation value increment" means the equalized value of a ~~parcel of real~~

taxable property that is certified under this section minus the environmental remediation tax incremental base. In any year, the environmental remediation value increment is "positive" if the environmental remediation tax incremental base of the ~~parcel of~~ taxable property is less than the aggregate value of the ~~parcel of~~ taxable property as equalized by the department; it is "negative" if that base exceeds that aggregate value.

SECTION 6. 66.1106 (1) (i) of the statutes is amended to read:

66.1106 (1) (i) "Period of certification" means a period of not more than ~~16~~ 23 years beginning after the department certifies the environmental remediation tax incremental base of a ~~parcel of property~~ under sub. (4) or a period before all eligible costs have been paid, whichever occurs first.

SECTION 7. 66.1106 (1) (je) of the statutes is created to read:

66.1106 (1) (je) "Project expenditures" means eligible costs and other costs incurred by a political subdivision to create and operate an environmental remediation tax incremental district.

SECTION 8. 66.1106 (1) (k) of the statutes is amended to read:

66.1106 (1) (k) "Taxable property" means all real and personal taxable property located in an environmental remediation tax incremental district.

SECTION 9. 66.1106 (1m) of the statutes is created to read:

66.1106 (1m) CREATION OF ENVIRONMENTAL REMEDIATION TAX INCREMENTAL DISTRICTS. In order to implement the provisions of this section, the governing body of the political subdivision shall adopt a resolution which does all of the following:

(a) Describes the boundaries of an environmental remediation tax incremental district with sufficient definiteness to identify with ordinary and reasonable certainty the territory included within the district.

(b) Creates the district as of January 1 of the same calendar year for a resolution adopted before October 1 or as of January 1 of the next subsequent calendar year for a resolution adopted after September 30.

SECTION 10. 66.1106 (2) (a) of the statutes is amended to read:

66.1106 (2) (a) A political subdivision that develops, and whose governing body approves, a written proposal to remediate environmental pollution may use an environmental remediation tax increment to pay the eligible costs of remediating environmental pollution on contiguous parcels of property that are located in an environmental remediation tax incremental district within the political subdivision and that are not part of a tax incremental district created under s. 66.1105, as provided in this section, except that a political subdivision may use an environmental remediation tax increment to pay the cost of remediating environmental pollution of groundwater

without regard to whether the property above the ground-water is owned by the political subdivision. No political subdivision may submit an application to the department under sub. (4) until the joint review board approves the political subdivision's written proposal under sub. (3).

SECTION 11. 66.1106 (4) (intro.) of the statutes is amended to read:

66.1106 (4) CERTIFICATION. (intro.) Upon written application to the department of revenue by the clerk of a political subdivision on or before April 1 of the year following the year in which the certification described in par. (a) is received from the department of natural resources December 31 of the same calendar year for an environmental remediation tax incremental district created before October, as determined under sub. (1m) (b), or December 31 of the subsequent calendar year for an environmental remediation tax incremental district created after September 30, the department of revenue shall certify to the clerk of the political subdivision the environmental remediation tax incremental base of a parcel of real property if all of the following apply:

SECTION 12. 66.1106 (4) (b) of the statutes is amended to read:

66.1106 (4) (b) The political subdivision submits a statement that all taxing jurisdictions with the authority to levy general property taxes on the parcel or contiguous parcels of property have been notified that the political subdivision intends to recover the costs of remediating environmental pollution on the property and have been provided a statement of the estimated costs to be recovered.

SECTION 13. 66.1106 (7) (a) of the statutes is amended to read:

66.1106 (7) (a) Subject to pars. (b), (c) and (d), the department shall annually authorize the positive environmental remediation tax increment with respect to a parcel or contiguous parcels of property during the period of certification to the political subdivision that incurred the costs to remediate environmental pollution on the property, except that an authorization granted under this paragraph does not apply after the department receives the notice described under sub. (10) (b).

SECTION 14. 66.1106 (7) (d) 1. of the statutes is amended to read:

66.1106 (7) (d) 1. The department may not authorize a positive environmental remediation tax increment under par. (a) to pay otherwise eligible costs that are incurred by the political subdivision after the department of natural resources certifies to the department of revenue that environmental pollution on the parcel or contiguous parcels of property has been remediated unless the costs are associated with activities, as determined by the department of natural resources, that are necessary to close the site described in the site investigation report.

SECTION 15. 66.1106 (9) of the statutes is amended to read:

66.1106 (9) SEPARATE ACCOUNTING REQUIRED. An environmental remediation tax increment received with respect to a parcel or contiguous parcels of land that is subject to this section shall be deposited in a separate fund by the treasurer of the political subdivision. No money may be paid out of the fund except to pay eligible costs for a parcel or contiguous parcels of land, or to reimburse the political subdivision for such costs ~~or to satisfy claims of holders of bonds or notes issued to pay eligible costs~~. If an environmental remediation tax increment that has been collected with respect to a parcel of land remains in the fund after the period of certification has expired, it shall be paid to the treasurers of the taxing jurisdictions in which the parcel is located in proportion to the relative share of those taxing jurisdictions in the most recent levy of general property taxes on the parcel.

SECTION 16. 66.1106 (10) (title) of the statutes is amended to read:

66.1106 (10) (title) REPORTING REQUIREMENTS; NOTICE OF DISTRICT TERMINATION.

SECTION 17. 66.1106 (10) (a) of the statutes is amended to read:

66.1106 (10) (a) Prepare and make available to the public updated annual reports describing the status of all projects to remediate environmental pollution funded under this section, including revenues and expenditures. A copy of the report shall be sent to all taxing jurisdictions with authority to levy general property taxes on the parcel or contiguous parcels of property by May 1 annually.

SECTION 18. 66.1106 (10) (b) of the statutes is amended to read:

66.1106 (10) (b) Notify the department within 10 days after the period of certification for a parcel or contiguous parcels of property has expired.

SECTION 19. 66.1106 (10) (c) of the statutes is created to read:

66.1106 (10) (c) With regard to an environmental remediation tax incremental district, not later than 12 months after the last expenditure is made or not later than 12 months after an expenditure may be made under sub. (2) (b), whichever comes first, prepare and make available to the public a report that is similar to the report required under par. (a), except that the report required under this paragraph shall also include an independent certified audit of the project to determine if all financial transactions were made in a legal manner and to determine if the environmental remediation tax incremental district complied with this section. A copy of the report shall be sent out to all taxing jurisdictions which received the reports under par. (a).

SECTION 20. 66.1106 (10) (d) of the statutes is created to read:

66.1106 (10) (d) Not later than 180 days after an environmental remediation tax incremental district terminates under sub. (11), provide the department with all of

the following on a form that is prescribed by the department:

1. A final accounting of project expenditures that are made for the environmental remediation tax incremental district.

2. The final amount of eligible costs that have been paid for the environmental remediation tax incremental district.

3. The total amount of environmental remediation tax increments that have been paid to the political subdivision.

SECTION 21. 66.1106 (10) (e) of the statutes is created to read:

66.1106 (10) (e) If a political subdivision does not send to the department of revenue the form specified in par. (d) within the time limit specified in par. (d), the department may not certify the environmental remediation tax incremental base of a district under sub. (4) until the form is sent to the department.

SECTION 22. 66.1106 (11) of the statutes is created to read:

66.1106 (11) **TERMINATION OF ENVIRONMENTAL REMEDIATION TAX INCREMENTAL DISTRICTS.** An environmental remediation tax incremental district terminates when the earliest of the following occurs:

(a) The political subdivision has received aggregate environmental remediation tax increments with respect to the district in an amount equal to the aggregate of all eligible costs.

(b) Twenty-three years after the department certifies the environmental remediation tax incremental base of a parcel or contiguous parcels of property under sub. (4).

(c) The political subdivision's legislative body, by resolution, dissolves the district. Upon dissolving the district, the political subdivision becomes liable for all unpaid eligible costs actually incurred which are not paid from the separate fund under sub. (9).

SECTION 23. 66.1106 (12) of the statutes is created to read:

66.1106 (12) (a) **NOTICE OF DISTRICT TERMINATION.** A political subdivision that creates an environmental remediation tax incremental district under this section shall give the department written notice within 10 days of the termination of the environmental remediation tax incremental district under sub. (11).

(b) If the department receives a notice under par. (a) during the period from January 1 to May 15, the effective date of the notice is the date the notice is received. If the notice is received during the period from May 16 to December 31, the effective date of the notice is the first January 1 after the department receives the notice.

SECTION 24. 66.1106 (13) (title) of the statutes is amended to read:

66.1106 (13) (title) **PAYMENT OF ELIGIBLE COSTS FOR ANNEXED TERRITORY, REDETERMINATION OF TAX INCREMENTAL BASE; FEES.**

SECTION 25. 66.1106 (13) of the statutes is renumbered 66.1106 (13) (a) and amended to read:

66.1106 (13) (a) If a city or village annexes territory from a town and if the town is using an environmental remediation tax increment to remediate environmental pollution on all or part of the territory that is annexed, the city or village shall pay to the town that portion of the eligible costs that are attributable to the annexed territory. The city or village, and the town, shall negotiate an agreement on the amount that must be paid under this subsection. The department shall redetermine the environmental remediation tax incremental base of any parcel of real property for which the environmental remediation tax incremental base was determined under sub. (4) if part of that parcel is annexed under this subsection.

SECTION 26. 66.1106 (13) (b) of the statutes is created to read:

66.1106 (13) (b) The department may impose a fee of \$1,000 on a political subdivision to determine or redetermine the environmental remediation tax incremental base of an environmental remediation tax incremental district under this subsection or sub. (4).

SECTION 27. 74.23 (1) (b) of the statutes is amended to read:

74.23 (1) (b) *General property taxes.* After making the distribution under par. (a), the taxation district treasurer shall pay to each taxing jurisdiction within the district its proportionate share of general property taxes, except that the treasurer shall pay the state's proportionate share to the county. As part of that distribution, the taxation district treasurer shall retain for the taxation district and for each tax incremental district within the taxation district and each environmental remediation tax incremental district created by the taxation district its proportionate share of general property taxes. The taxation district treasurer shall also distribute to the county the proportionate share of general property taxes for each environmental remediation tax incremental district created by the county.

SECTION 28. 74.25 (1) (b) 1. of the statutes is amended to read:

74.25 (1) (b) 1. Pay in full to each taxing jurisdiction within the district all personal property taxes included in the tax roll which have not previously been paid to, or retained by, that taxing jurisdiction, except that the treasurer shall pay the state's proportionate share to the county. As part of that distribution, the taxation district treasurer shall allocate to each tax incremental district within the taxation district and each environmental remediation tax incremental district created by the taxation district its proportionate share of personal property taxes. The taxation district treasurer shall also distribute to the county the proportionate share of personal property taxes for each environmental remediation tax incremental district created by the county.

SECTION 29. 74.25 (1) (b) 2. of the statutes is amended to read:

74.25 (1) (b) 2. Pay to each taxing jurisdiction within the district its proportionate share of real property taxes, except that the treasurer shall pay the state's proportionate share to the county. As part of that distribution, the taxation district treasurer shall retain for the taxation district and for each tax incremental district within the taxation district and each environmental remediation tax incremental district created by the taxation district its proportionate share of real property taxes. The taxation district treasurer shall also distribute to the county the proportionate share of real property taxes for each environmental remediation tax incremental district created by the county.

SECTION 30. 74.30 (1) (i) of the statutes is amended to read:

74.30 (1) (i) Pay in full to each taxing jurisdiction within the district all personal property taxes included in the tax roll which have not previously been paid to, or retained by, each taxing jurisdiction, except that the treasurer shall pay the state's proportionate share to the county. As part of that distribution, the taxation district treasurer shall allocate to each tax incremental district within the taxation district and each environmental remediation tax incremental district created by the taxation district its proportionate share of personal property taxes. The taxation district treasurer shall also distribute to the county the proportionate share of personal property taxes for each environmental remediation tax incremental district created by the county.

SECTION 31. 74.30 (1) (j) of the statutes is amended to read:

74.30 (1) (j) Pay to each taxing jurisdiction within the district its proportionate share of real property taxes, except that the treasurer shall pay the state's proportionate share to the county. As part of that distribution, the taxation district treasurer shall retain for the taxation district and for each tax incremental district within the taxation district and each environmental remediation tax incremental district created by the taxation district its proportionate share of real property taxes. The taxation district treasurer shall also distribute to the county the proportionate share of real property taxes for each environmental remediation tax incremental district created by the county.

SECTION 32. 74.30 (2) (b) of the statutes is amended to read:

74.30 (2) (b) Pay to each taxing jurisdiction within the district its proportionate share of real property taxes collected, except that the taxation district treasurer shall pay the state's proportionate share to the county, and the county treasurer shall settle for that share under s. 74.29. As part of that distribution, the taxation district treasurer shall retain for the taxation district and for each tax incremental district within the taxation district and each envi-

ronmental remediation tax incremental district created by the taxation district its proportionate share of real property taxes. The taxation district treasurer shall also distribute to the county the proportionate share of real property taxes for each environmental remediation tax incremental district created by the county.

SECTION 33. 79.095 (1) (c) of the statutes is amended to read:

79.095 (1) (c) "Taxing jurisdiction" means a municipality, county, school district, special purpose district, tax incremental district, environmental remediation tax incremental district, or technical college district.

SECTION 34. 79.095 (2) (b) of the statutes is amended to read:

79.095 (2) (b) On or before December 31, the tax rate used for each tax incremental district for which the municipality assesses property and for each environmental remediation tax incremental district for which the municipality assesses property.

SECTION 35. 227.01 (13) (zc) of the statutes is amended to read:

227.01 (13) (zc) Establishes ~~an inventory or a hazard ranking~~ a database under s. 292.31.

SECTION 36. 234.01 (4n) (a) 3m. a. of the statutes is amended to read:

234.01 (4n) (a) 3m. a. The facility is in a tax incremental district or an environmental remediation tax incremental district or is the subject of an urban development action grant and will result in a net economic benefit to the state.

SECTION 37. 292.12 of the statutes is created to read:

292.12 Sites with residual contamination. (1)

DEFINITIONS. In this section:

(a) "Agency with administrative authority" means the department of agriculture, trade and consumer protection with respect to a site over which it has jurisdiction under s. 94.73 (2), the department of commerce with respect to a site over which it has jurisdiction under s. 101.144 (2) (a), or the department of natural resources with respect to a site over which it has jurisdiction under s. 292.11 (7).

(b) "Case closure" means a determination by the agency with administrative authority, based on information available at the time of the review by the agency with administrative authority, that no further remedial action is necessary at a site.

(c) "Engineering control" means an action designed and implemented to contain contamination or to minimize the spread of contamination, including a cap or soil cover.

(d) "Remedial action" means action that is taken in response to a discharge of a hazardous substance and that is necessary to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to the air, lands, and waters of this state.

(e) "Site" means a waste site or any area where a hazardous substance has been discharged.

(2) AGENCY AUTHORITY. The agency with administrative authority may do any of the following as a condition of approving remedial action or of issuing a case closure letter if residual contamination remains on a site after the conclusion of remedial action at the site:

(a) Require maintenance of an engineering control on the site.

(b) Require an investigation of the extent of residual contamination and the performance of any necessary remedial action if a building or other structural impediment is removed that had prevented a complete investigation or remedial action at the site.

(c) Impose limitations or other conditions related to property, in accordance with rules promulgated by the department, to ensure that conditions at the site remain protective of public health, safety, and welfare and the environment, and, as applicable, to promote economic development.

(3) DATABASE. (a) The department shall maintain a database listing sites for which remedial action has been approved or a case closure letter has been issued and that have residual contamination and listing sites for which the department has directed that action be taken under s. 292.11 (9) (e) 4. The department shall make the database available to the public. The department shall include any requirements, limitations, or conditions imposed under sub. (2) (a) to (c) in the database, subject to modification under sub. (6), and shall include any action that the department has directed to be taken under s. 292.11 (9) (e) 4.

(b) 1. If residual contamination remains on a site after the conclusion of remedial action at the site, the agency with administrative authority shall request the department to list the site, and any requirements, limitations, or conditions imposed under sub. (2) (a) to (c), in the database maintained by the department under par. (a) and, as a condition of approving remedial action or of issuing a case closure letter, shall require the person requesting approval of remedial action or case closure to provide the information necessary for the listing and to pay a fee established by the department for the listing.

2. If the department has directed that a local governmental unit or economic development corporation take action under s. 292.11 (9) (e) 4. for a site, the department shall list the site, and the action that the department has directed, in the database maintained by the department under par. (a) and require the local governmental unit or the corporation to pay a fee established by the department for the listing.

(4) NOTIFICATION OF RESIDUAL CONTAMINATION. Before a person applies for case closure for a site that includes any property that has residual contamination and is not owned by the person, the person shall provide written notification of the residual contamination to the

owner of that property. The person shall include in the notice, at a minimum, a description of the type of residual contamination and the location and description of any engineering control on the site.

(5) COMPLIANCE WITH REQUIREMENTS AND LIMITATIONS. (a) A person who owns property, including a property or site that is listed under sub. (3) (b), shall comply with requirements described in sub. (2) (a) or (b) that are imposed by an agency with administrative authority without regard to when the person obtained the property, unless another person has a legally enforceable responsibility to comply with the requirements.

(b) A person who owns or occupies property, including a property or site that is listed under sub. (3) (b), shall comply with limitations or conditions described in sub. (2) (c) that are imposed by an agency with administrative authority without regard to when the person obtained or occupied the property.

(6) MODIFICATION OF REQUIREMENTS. A person may request the agency with administrative authority over a site to change or eliminate a requirement, limitation, or condition that it imposed under sub. (2) (a) to (c) with respect to a site. If the agency with administrative authority agrees to change or eliminate a requirement, limitation, or condition imposed under sub. (2) (a) to (c), it shall provide written approval to the person, shall request the department to change the listing under sub. (3) (b) for the site accordingly, and shall require the person to pay a fee established by the department for changing the listing.

SECTION 38. 292.15 (2) (ae) 7. of the statutes is created to read:

292.15 (2) (ae) 7. If the voluntary party owns or controls the property, the voluntary party allows the department, any authorized representative of the department, a representative of a company that has issued insurance required under subd. 3m., any party that possessed or controlled the hazardous substance or caused the discharge of the hazardous substance, and any consultant or contractor of any of those persons to enter the property to determine whether natural attenuation has failed and to take action to respond to the discharge if natural attenuation has failed.

SECTION 39. 292.15 (2) (at) of the statutes is repealed.

SECTION 40. 292.15 (2) (b) 5. of the statutes is created to read:

292.15 (2) (b) 5. If the voluntary party does not own or control the property, the person who owns or controls the property fails to allow the department, any authorized representative of the department, any representative of a company that has issued insurance required under par. (ae) 3m., any party that possessed or controlled the hazardous substance or caused the discharge of the hazardous substance, or any consultant or contractor of any of those persons to enter the property to determine whether

natural attenuation has failed and to take action to respond to the discharge if natural attenuation has failed.

SECTION 41. 292.15 (2) (c) of the statutes is amended to read:

292.15 (2) (c) *Prohibition on action.* The department of justice may not commence an action under 42 USC 9607 against any voluntary party meeting the criteria of this subsection to recover costs for which the voluntary party is exempt under pars. (a), (ae), (ag), (am), (at) and (b).

SECTION 42. 292.15 (2) (d) of the statutes is repealed.

SECTION 43. 292.15 (2) (e) of the statutes is amended to read:

292.15 (2) (e) *Contract with insurer.* If the department requires insurance under par. (ae) 3m. ~~or (at) 3.~~, the department may contract with an insurer to provide insurance required under par. (ae) 3m. ~~or (at) 3.~~ and may require voluntary parties to obtain coverage under the contract.

SECTION 44. 292.15 (3) of the statutes is amended to read:

292.15 (3) **SUCCESSORS AND ASSIGNS.** An exemption provided in sub. (2) applies to any successor or assignee of the voluntary party if the successor or assignee complies with the provisions of sub. (2) (a) 4. and 5. or (ae) 3m., 4. ~~and 5.~~ and 7. and, if applicable, sub. (2) (ag) 4. or (am) as though the successor or assignee were the voluntary party except that the exemption in sub. (2) does not apply if the successor or assignee knows that a certificate under sub. (2) (a) 3., (ae) 3., (ag) 2. or (am) was obtained by any of the means or under any of the circumstances specified in sub. (2) (a) 6.

SECTION 45. 292.15 (6) (a) of the statutes is renumbered 292.15 (6).

SECTION 46. 292.15 (6) (b) of the statutes is repealed.

SECTION 47. 292.15 (7) (d) of the statutes is created to read:

292.15 (7) (d) A solid waste facility that was licensed under s. 289.31 or s. 144.44, 1993 stats.

SECTION 48. 292.15 (7) (e) of the statutes is created to read:

292.15 (7) (e) A solid waste facility or waste site at which active remedial operation or treatment is required, including a site or facility where methane or groundwater monitoring or gas, leachate, or groundwater collection or treatment is required.

SECTION 49. 292.21 (1) (c) 2. g. of the statutes is amended to read:

292.21 (1) (c) 2. g. A review to determine if the real property is listed in any of the written compilations of sites or facilities considered to pose a threat to human health or the environment, including the national priorities list under 42 USC 9605 (a) (8) (B); the federal environmental protection agency's information system for the comprehensive environmental response, compensation and liability act, 42 USC 9601 to 9675, (CERCLIS);

and the department's most recent Wisconsin remedial response site evaluation report, including the inventory database of sites or facilities which may cause or threaten to cause environmental pollution and other properties that are environmentally contaminated required by s. 292.31 (1) (a); ~~and the department's registry of abandoned landfills.~~

SECTION 50. 292.23 of the statutes is created to read:

292.23 Responsibility of local governmental units; solid waste. (1) **DEFINITION.** In this section:

(a) "Local governmental unit" means a municipality, a redevelopment authority created under s. 66.1333, a public body designated by a municipality under s. 66.1337 (4), a community development authority, or a housing authority.

(b) "Solid waste facility" has the meaning given in s. 289.01 (35).

(c) "Waste site" has the meaning given in s. 289.01 (41).

(2) **EXEMPTION FROM LIABILITY.** Except as provided in sub. (3), a local governmental unit is exempt from s. 289.05, and rules promulgated under that section, with respect to property acquired by the local governmental unit before, on, or after the effective date of this subsection [revisor inserts date], if any of the following applies:

(a) The local governmental unit acquired the property through tax delinquency proceedings or as the result of an order by a bankruptcy court.

(b) The local governmental unit acquired the property from a local governmental unit that is exempt under this subsection with respect to the property.

(c) The local governmental unit acquired the property through a condemnation or other proceeding under ch. 32.

(d) The local governmental unit acquired the property for the purpose of slum clearance or blight elimination.

(e) The local governmental unit acquired the property through escheat.

(f) The local governmental unit acquired the property using funds appropriated under s. 20.866 (2) (ta) or (tz).

(3) **EXCEPTIONS.** (a) Subsection (2) does not apply with respect to environmental pollution or a discharge of a hazardous substance caused by any of the following:

1. An action taken by the local governmental unit.

2. A failure of the local governmental unit to take appropriate action to restrict access to the property in order to minimize costs or damages that may result from unauthorized persons entering the property.

3. A failure of the local governmental unit to sample and analyze unidentified substances in containers stored aboveground on the property.

4. A failure of the local governmental unit to remove and properly dispose of, or to place in a different container and properly store, any hazardous substance stored

aboveground on the property in a container that is leaking or is likely to leak.

(b) Subsection (2) does not apply if, after considering the intended development and use of the property, the department determines that action is necessary to reduce to acceptable levels any substantial threat to public health or safety when the property is developed or put to that intended use, the department directs the local governmental unit to take that necessary action, and the local governmental unit does not take that action as directed.

(c) Subsection (2) only applies if the local governmental unit agrees to allow the department, any authorized representatives of the department, any party that possessed or controlled a hazardous substance that was discharged or that caused environmental pollution or the discharge of a hazardous substance, and any consultant or contractor of such a party to enter the property to take action to respond to the environmental pollution or discharge.

(d) Subsection (2) does not apply to property described in sub. (2) (f) unless the local governmental unit enters into an agreement with the department to ensure that the conditions in pars. (a) and (b) are satisfied.

(e) Subsection (2) does not apply to any solid waste facility or waste site that was operated by the local governmental unit or was owned by the local governmental unit while it was operated.

(f) Subsection (2) does not apply to a solid waste facility that was licensed under s. 289.31 or s. 144.44, 1993 stats.

(g) Subsection (2) does not apply to property at which the local governmental unit disposed of waste that caused environmental pollution or a discharge of a hazardous substance at the property.

(h) Subsection (2) does not apply to waste generated on the property by the local governmental unit, its agents, or its contractors.

(i) Subsection (2) does not apply if the local governmental unit undertakes or authorizes construction on the property without the approval of the department or if the local government unit undertakes an activity that interferes with a closed solid waste facility or waste site and that causes a threat to public health, safety, or welfare.

(j) Subsection (2) only applies to property with respect to which, before the local governmental unit acquired the property, the department imposed requirements related to health or safety for the maintenance of an active leachate or methane collection system, of a cap over waste on the property, or of a groundwater or gas monitoring system if the local governmental unit complies with those requirements.

(k) Subsection (2) does not exempt a local governmental unit from land use restrictions required by the department, including those that are necessary to prevent damage to a cap over waste on the property or to other-

wise prevent uses of the property that may cause a threat to public health or safety.

SECTION 51. 292.31 (1) (title) of the statutes is amended to read:

292.31 (1) (title) INVENTORY DATABASE; ANALYSIS; HAZARD RANKING.

SECTION 52. 292.31 (1) (a) (title) of the statutes is repealed and recreated to read:

292.31 (1) (a) (title) Database.

SECTION 53. 292.31 (1) (a) 1. of the statutes is repealed and recreated to read:

292.31 (1) (a) 1. The department shall compile, maintain, and make available to the public a database of all sites or facilities and other properties at which the discharge of a hazardous substance or other environmental pollution has been reported to the department. The department shall update the database regularly.

SECTION 54. 292.31 (1) (a) 2. of the statutes is repealed.

SECTION 55. 292.31 (1) (a) 3. of the statutes is amended to read:

292.31 (1) (a) 3. The decision of the department to include a site or facility or other property on the inventory database under subd. 1. or exclude a site or facility or other property from the inventory database is not subject to judicial review.

SECTION 56. 292.31 (1) (a) 4. of the statutes is amended to read:

292.31 (1) (a) 4. Notwithstanding s. 227.01 (13) or 227.10 (1), the list of sites or facilities which results from the inventory database under subd. 1. is not a rule.

SECTION 57. 292.31 (1) (b) 1. of the statutes is amended to read:

292.31 (1) (b) 1. The department may take direct action under subd. 2. or 3. or may enter into a contract with any person to take the action. ~~The department may take action under subd. 2. or 3. regardless of whether a site or facility is included on the inventory under par. (a) or the hazard ranking list under par. (c).~~

SECTION 58. 292.31 (1) (c) of the statutes is repealed.

SECTION 59. 292.31 (2) (intro.) of the statutes is amended to read:

292.31 (2) ENVIRONMENTAL RESPONSE PLAN RULES. (intro.) The department shall promulgate ~~by rule a waste facility environmental response plan. The plan shall contain rules relating to investigation and remedial action for sites or facilities and other properties at which the air, land, or waters of the state have been affected by the discharge of a hazardous substance or other environmental pollution, including all of the following provisions:~~

SECTION 60. 292.31 (2) (a) of the statutes is amended to read:

292.31 (2) (a) Methods for ~~preparing the inventory and conducting the analysis under sub. (1)~~ investigating

the degree and extent of contamination for actions under sub. (3).

SECTION 61. 292.31 (3) (c) of the statutes is amended to read:

292.31 (3) (c) *Sequence of remedial action.* In determining the sequence for taking remedial action under this subsection, the department shall consider the hazard ranking significance to public health, the community, and the environment of each site or facility, the amount of funds available, the information available about each site or facility, the willingness and ability of an owner, operator, or other responsible person to undertake or assist in remedial action, the availability of federal funds under 42 USC 9601, et seq., and other relevant factors. The department shall give the highest priority to remedial action at sites or facilities which have caused contamination of a municipal water system ~~in a town with a population greater than 10,000. If any such site or facility is eligible for federal funds under 42 USC s. 9601 to 9675, but the federal funds will not be available before January 1, 2000, the department shall proceed with remedial action using state funds.~~

SECTION 62. 292.31 (3) (cm) of the statutes is repealed.

SECTION 63. 292.31 (3) (d) of the statutes is amended to read:

292.31 (3) (d) *Emergency responses.* Notwithstanding rules promulgated under this section, ~~the hazard ranking list, or the considerations for taking action under par. (c) or the remedial action schedule under par. (cm),~~ the department may take emergency action under this subsection and subs. (1) and (7) at a site or facility if delay will result in imminent risk to public health or safety or the environment. The department is not required to hold a hearing under par. (f) if emergency action is taken under this paragraph. The decision of the department to take emergency action is a final decision of the agency subject to judicial review under ch. 227.

SECTION 64. 292.31 (4) of the statutes is amended to read:

292.31 (4) **MONITORING COSTS AT NONAPPROVED FACILITIES OWNED OR OPERATED BY MUNICIPALITIES.** Notwithstanding ~~the inventory, analysis and hazard ranking under sub. (1), the environmental response plan prepared rules~~ under sub. (2) or the environmental repair authority,

remedial action sequence and emergency response requirements under sub. (3), the department shall pay that portion of the cost of any monitoring requirement which is to be paid under s. 289.31 (7) (f) from the appropriation under s. 20.370 (2) (dv) prior to making other payments from that appropriation.

SECTION 65. 292.31 (5) of the statutes is repealed.

SECTION 66. 292.57 (title) of the statutes is amended to read:

292.57 (title) Database of properties on which groundwater standards are exceeded with residual contamination.

SECTION 67. 292.57 (2) (a) of the statutes is amended to read:

292.57 (2) (a) The department may promulgate a rule specifying a fee for placing information into a database concerning a property on which a groundwater standard is exceeded into a database, a property on which residual contamination is present in soil, or a property that is subject to s. 292.12 (3) (b). The department may also specify a fee for modifying information in the database.

SECTION 68. Initial applicability.

(1) The treatment of sections 66.1106 (1) (c), (e), (f), (fm), (g), (i), (je), and (k), (1m), (2) (a), (4) (intro.) and (b), (7) (a) and (d) 1., (9), (10) (title), (a), (b), (c), (d), and (e), (11), (12), and (13) (title), 74.23 (1) (b), 74.25 (1) (b) 1. and 2., 74.30 (1) (i) and (j) and (2) (b), 79.095 (1) (c) and (2) (b), and 234.01 (4n) (a) 3m. a. of the statutes, the renumbering and amendment of section 66.1106 (13) of the statutes, and the creation of section 66.1106 (13) (b) of the statutes first apply to an environmental remediation tax incremental district that is in existence on October 1, 2006, or that is created on October 1, 2006.

SECTION 69. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment sections 66.1106 (1) (c), (e), (f), (fm), (g), (i), (je), and (k), (1m), (2) (a), (4) (intro.) and (b), (7) (a) and (d) 1., (9), (10) (title), (a), (b), (c), (d), and (e), (11), (12), and (13) (title), 74.23 (1) (b), 74.25 (1) (b) 1. and 2., 74.30 (1) (i) and (j) and (2) (b), 79.095 (1) (c) and (2) (b), and 234.01 (4n) (a) 3m. a. of the statutes, the renumbering and amendment of section 66.1106 (13) of the statutes, and the creation of section 66.1106 (13) (b) of the statutes takes effect on October 1, 2006.